IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 873 OF 2005

Shri Gurunath Kathod Mitkar ... Appellant (Ori.Defendant)

V/s

Smt. Devku Mangalya Mitkar (since deceased through her legal heirs & representative) & ors. ... Respondents (Ori.Plaintiffs)

Mr. A.R. Pitale for the appellant.

Mr. Sandesh D. Patil for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 31ST AUGUST, 2005

P.C.:

1. This is an appeal filed by the appellant against the judgment and order passed by the Addl. District & Sessions Judge, Thane dated 8.10.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Bhiwandi decreeing the plaintiffs' suit declaring the gift dated 30th April, 30.4.1979 as invalid and void document and, therefore, was cancelled with further declaration that the defendant had no right, title and interest in respect of

the suit land.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs filed the suit for declaration to the effect that the gift deed dated 30.4.1979 purported to be executed by the defendant was fraudulently obtained by misrepresentation and was invalid and, therefore, its cancellation was sought for and also for declaration that the defendant has no right title and interest in the suit land i.e. the land of 9 gunthas from village Punre, Tal. Bhiwandi, Dist. Thane.

Defendant contested the suit on the ground that the gift deed was legal and proper and its execution was duly proved and hence the plaintiffs' suit was sought to be dismissed.

4. The learned Trial Judge, on the basis of available evidence came to the conclusion that the plaintiffs had proved that the impugned gift deed was fraudulently obtained from plaintiff No.1 in favour of defendant and, therefore, it was void in law. It was also held that the plaintiffs were entitled for declaration that the

suit gift deed was cancelled and no right involved for the defendant in the suit property and suit came to be decreed.

5. The appeal was carried to the District Court, Thane. The learned Addl. Dist. Judge, after hearing both sides and on the basis of available evidence came to the conclusion that the findings recorded by the learned lower Court were legal and proper and dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in the appeal. The learned counsel for the appellant also submitted that the appreciation of the evidence and the inferences drawn by both the Courts below were perverse and, therefore, the appellant deserves indulgence of this Court. However, I have perused the entire judgments of both the Courts below. The learned lower appellate Court is seen to have properly appreciated the entire evidence in proper perspective and exhaustively and hence came to the conclusion that the plaintiffs have proved that the suit gift deed was obtained by practicing fraud and misrepresentation and, as such, it was void in law and hence cancelled and also held that

the defendant had no right, title and interest in the suit property. It is needless to mention that in a case reported in **A.I.R. 1999 SC 2213, between Kondiba Dagadu Kadam v/s Savitribai Sopan Gujar & ors.,** the Apex Court has held that, it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. In a case wherefrom a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The ratio is especially relevant in the present case when both the Courts have recorded concurrent findings to the effect that the plaintiffs have proved the element of fraud and misrepresentation and, therefore, rightly held that the suit deserves to be decreed.

In the result, there is no merit in the appeal and stands dismissed with no order as to costs. Consequently, Civil Application No. 1403 of 2005 also stands dismissed with no order as to costs.

.....